

**REMARKS**

Claims 1-11 are pending in the application. Claims 1-10 are rejected and claim 11 is objected to as being dependant upon a rejected base claim. Claim 1 has been amended to incorporate the subject matter of claim 6. Claim 6 has been cancelled. No new matter has been added and no new issues are presented. Applicants understand that any rejection under new art is to be non-final. Applicants submit that pending claims 1-11 are now in condition for allowance.

**Claim Rejections under 35 U.S.C. §103****Claims 1, 3, 6, and 7**

Claims 1, 3, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meier (U.S. 6,574,343) in view of Gnecco (U.S. 5,640,457). Claim 1 has been amended to incorporate the subject matter of claim 6 and claim 6 has been cancelled. Applicants respectfully traverse this rejection on the basis of the above claim amendment and following remarks.

Claim 1 has been amended to incorporate the subject matter of claim 6. Specifically, Claim 1 now discloses an essentially cylindrically shaped housing, free of external moving operational elements, and formed of metal. Neither Meier or Gnecco, alone or in combination teach or suggest each and every element of claim 1. In fact, in the Examiner's rejection of claim 6, the subject matter of which claim 1 now incorporates, the Examiner admits that the combination of Meier and Gnecco does not teach that the treatment device is free of external moving operational elements. Applicants disagree, however, with the Examiner's suggestion that the absence of said external moving operational elements are not critical to the operation of the hearing device. The advantages in having no external moving operational elements are discussed in the present specification at page 4 lines 11-15 where it states "...no movable external operating elements at all are provided in the treatment device, for example, rotatable potentiometers, toggles switches, or pushbuttons. This approach facilitates sealing the treatment device, thereby enhancing the reliability of the treatment device and reducing its production costs."

In contrast, figures 1 and 3 of Meier clearly show external moving operating elements, while Gnecco calls out moving operational elements, specifically a speaker volume control and telephone coil operation switch, in the claims as well showing them in the figures.

Thus, Applicants respectfully submit that the combination of Meier and Gnecco actually teaches away from being free of external moving operational elements. Furthermore, the prior art disclosed in Gnecco show the use of external moving operational elements which suggests it is common in the industry to have such external moving operational elements. Therefore, it would not be obvious, as the Examiner suggests, to construct the treatment device of Meier and Gnecco, such that it does not include external moving operational elements.

Claims 3 and 7 depend from claim 1 and as such incorporate each and every element of claim 1. In addition, claims 3 and 7 are patentable based on their own claimed characteristics. As discussed above, neither Meier or Gnecco, alone or in combination, teach or suggest each and every element of claim 1; therefore neither Meier or Gnecco teach or suggest each and every element of claims 3 and 7.

Therefore, in view of the above amendment and arguments, Applicants respectfully request the reconsideration and withdrawal of the rejection to claims 1, 3, 6, and 7 under 35 USC § 103(a).

#### Claims 2, 4, 5, 8, and 9

Claims 2, 4, 5, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meier (U.S. 6,574,343) in view of Gnecco (U.S. 5,640,457) as applied to claim 1 above, and further in view of Narisawa (U.S. 6,041,128). Applicants respectfully traverse this rejection on the basis of the above claim amendment and following remarks.

Claims 2, 4, 5, 8 and 9 depend eiether directly or indirectly from claim 1 and as such incorporate each and every element of claim 1. In addition, claims 2, 4, 5, 8 and 9 are patentable based on their own claimed characteristics. As discussed above, neither Meier or Gnecco, alone or in combination, teach or suggest each and every element of claim 1. The addition of Narisawa fails to cure this deficiency. Therefore, the combination of Meier, Gnecco, and Narisawa fails to teach or suggest each and every element of claims 2, 4, 5, 8 and 9.

Therefore, in view of the above amendment and arguments, Applicants respectfully request the reconsideration and withdrawal of the rejection to claims 2, 4, 5, 8 and 9 under 35 USC § 103(a).

#### Claim 10

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meier (U.S. 6,574,343) in view of Gnecco (U.S. 5,640,457) in view of Narisawa (U.S. 6,041,128) as applied to claim 8 above, and further in view of Giannetti (U.S. 5,675,657). Applicants respectfully traverse this rejection on the basis of the above claim amendment and following remarks.

Claim 10 depends indirectly from claim 1 and as such incorporates each and every element of claim 1. In addition, claim 10 is patentable based on its own claimed characteristics. As discussed above, the combination of Meier, Gnecco, and Narisawa fails to teach or suggest each and every element of claim 1. The addition of Gianetti fails to cure this deficiency. Therefore, the combination of Meier, Gnecco, Narisawa, and Gianetti fails to teach or suggest each and every element of claim 10.

Therefore, in view of the above amendment and arguments, Applicants respectfully request the reconsideration and withdrawal of the rejection to claim 10 under 35 USC § 103(a).

#### **Allowable Subject Matter**

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Applicants are pleased to note the identification of allowable subject matter by the examiner. Claim 11 depends indirectly from claim 1. Claim 1 has presently been amended to place it in condition for allowance. As such, Applicants respectfully request that the objection to claim 11 as being dependant on a rejected claim be reconsidered and withdrawn in view of the above claim amendment and arguments.


**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this statement. However, if a fee is due, please charge our Deposit Account No. 12-0080, under Order No. HHI-033US from which the undersigned is authorized to draw.

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Respectfully submitted,

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